



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/165603

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was held on June 3, 2015, by telephone. The petitioner asked for and was granted a seven day post-hearing briefing period, due to receipt of the Division's position letter shortly before hearing.

The issue for determination is whether the Division correctly approved the petitioner's prior authorization request for PCW services at the level of 22.0 hours weekly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Kelly Van Sicklen
1414 MacArthur Rd.
Madison, WI 537

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submission of Sharon Beck, RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. He is certified for MA or BadgerCare Plus.
2. On December 30, 2014, a prior authorization request was submitted on the petitioner's behalf for **28** hours weekly of PCW services, beginning December 17, 2014. On March 18, 2015, the Division issued written notice that it was "modifying" the request by approving PCW time of 14.5 hours weekly. The Division later amended its position to authorize 22 PCW hours weekly.
3. The Division's basis for service denial was that the number of requested hours was not medically necessary. In particular, the Division concluded that this level of PCW services was not needed because the petitioner does not require help with "eating," because he does not need help setting up adaptive aids/a clothing protector, or being spoon-fed. The Division also believed that the number of toileting episodes was overstated, and assigned only one daily episode of toileting help in its calculation. Time for medication administration was not given because of a lack of a physician order for the same on the petitioner's Plan of Care.
4. A complete Home Health Certification and Plan of Care for the petitioner was not submitted to the Division until January 15, 2015.
5. The petitioner, age 67, resides with his primary caregiver (friend) in the community. The petitioner has diagnoses of chronic airway obstruction, coronary artery disease, hypertension, and history of hypothyroidism and GERD. He has functional limitations in the areas of hearing, endurance dyspnea at rest, and ambulation. He ambulates with a walker, uses a wheelchair outside of the home, uses nebulizers, is catheterized, and wears oxygen. His range of motion is normal. The petitioner was hospitalized in May 2014 due to his severe COPD (FEV1 of 26%), and suffered exacerbations in October and November, despite taking medication.

A state Personal Care Screening Tool (PCST) review was performed by a nurse for the petitioner on November 14, 2014. The PCST program concluded that the petitioner requires **28.5** hours of PCW care weekly. The PCST results declared that the petitioner required PCW physical assistance with bathing daily, dressing twice daily, grooming once daily, toileting seven times daily, transfers, ambulation, and medication administration. The petitioner was not yet catheterized in November. He feeds himself. The petitioner takes oral medications.
6. The petitioner requires daily physical assistance with bathing, dressing grooming, transfers and ambulation. Transfer help is at a "D" level in the PCST Completion Instructions. There is no evidence that he has dysphagia or that a soft diet was ordered for a choking risk. He also requires help with a catheter (twice a day is the maximum) for toileting. The petitioner requires the service of others to purchase and prepare his food, do laundry, clean his bedroom, and take/accompany him to medical appointments.

DISCUSSION

Personal care worker service (PCW), as defined at Wis. Admin. Code §DHS 107.112(1), is an MA-covered service, subject to prior authorization after the first 250 hours per calendar year. Wis. Admin. Code §DHS 107.112(2) (May 2009). In determining whether to approve such a service request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. The petitioner bears the burden of establishing, by a preponderance of the credible evidence, that all of the requested care is needed.

The Department asserts that it has reduced the PCW time to the amount it believes is necessary to perform purely PCW tasks. The petitioner contends that s/he needs all of the requested care time.

The state code does restrict MA-covered PCW tasks as follows:

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(2)(b). For tasks #1 through #4, #6, #8, #9, and #12, the Division's medical professionals have calculated typical task performance times, and placed them in a policy reference document, *Personal Care Activity Time Allocation Table*. Task performance times from the *Table* will be referenced below.

The caregiver testified in support of more PCW time for the petitioner, and supplied updated medical records with correct current diagnoses. Through hearing testimony, the petitioner established that she requires the following daily times for activities of daily living (ADL) tasks:

bathing – 30 minutes
 dressing – 20 minutes
 grooming – 30 minutes
 eating – 0
 mobility – 20
 toileting – 20 minutes
 medication administration - 0
 transfers – 30 daily.

(No change from Division position).

I did not disturb the toileting time in light of the catheterization twice daily limit, as a change would be adverse to the petitioner. Medication *administration* was not listed in petitioner's physician-signed Plan of Care form. *See*, 42 C.F.R. § 440.167(a)(1); Wis. Admin. Code § DHS 107.112(1)(a). In a future or an amended PCW authorization request, the petitioner may wish to be sure that the Plan of Care declares that medication *administration* help is needed (*e.g.*, for the nebulizers). The above adopted times are the Department's maximum standard time amounts for the tasks of bathing, dressing, grooming, transfers and mobility. These amounts bring total ADL time for the week up to 1,050 minutes weekly.

The Division's policy standard is to add no more than 25% of the ADL time to the authorization or services incidental to ADLs where a live-in caregiver is present. In this case, that would allow addition of 263 minutes weekly to the total. Thus, the petitioner's PCW time for the period is 1,313 minutes or 22 hours. The Division's result is affirmed.

CONCLUSIONS OF LAW

1. The petitioner requires 22.00 PCW hours weekly for the current authorization period.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

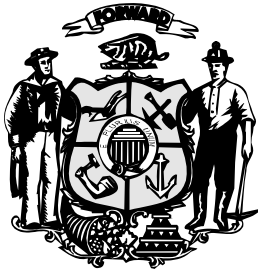
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of July, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 17, 2015.

Division of Health Care Access and Accountability
Attorney Kelly Van Sicklen